

Amendment Number 3
to
Contract Number DIR-SDD-2175
between
State of Texas, acting by and through the Department of Information Resources
and
Northrop Grumman Systems Corporation

This Amendment Number 3 to Contract Number DIR-SDD-2175 is between the Department of Information Resources ("DIR") and Northrop Grumman Systems Corporation. DIR and Vendor agree to modify the terms and conditions of the Contract as follows:

1. **Contract, Section 2. Term of Contract** is hereby amended as follows:

DIR and Vendor hereby agree to extend the term of the Contract for one (1) year through March 15, 2016, or until terminated pursuant to the termination clauses contained in the Contract. Prior to expiration of the term, DIR and Vendor may extend the Contract, upon mutual agreement, for one (1) additional one-year term.

2. **Contract, Section 4. Pricing**, is hereby restated in its entirety as follows:

NOTE: THE MANUFACTURER'S SUGGESTED RETAIL PRICE IN APPENDIX C, PRICING INDEX, ARE EXCLUSIVELY AVAILABLE TO STATE & LOCAL GOVERNMENTS WITHIN THE STATE OF TEXAS.

4. Pricing

Pricing to the DIR Customer shall be as set forth in Appendix A, Standard Terms and Conditions for Services Contracts, Section 7, Pricing, Purchase Orders, Invoices and Payments, and as set forth in Appendix C, Pricing Index, and shall include the DIR Administrative Fee.

3. **Contract, Section 4. Pricing A - G** is deleted and is hereby restated in its entirety in Appendix A, Standard Terms and Conditions For Services Contracts, Section 7, Pricing, Purchase Orders, Invoices and Payments dated 02/04/15 as attached hereto.
4. **Contract, Section 6. Notification** is hereby restated in its entirety as follows:

6. Notification

All notices under this Contract shall be sent to a party at the respective address indicated below.

If sent to the State:

Dana L. Collins, CTPM, CTCM
Manager, Contract and Vendor Management
Department of Information Resources
300 W. 15th St., Suite 1300
Austin, Texas 78701
Phone: (512) 936-2233
Facsimile: (512) 475-4759
Email: dana.collins@dir.texas.gov

If sent to the Vendor:

Kristen Walls
Contracts Administrator
Northrop Grumman Systems Corporation
7745 Chevy Chase Bldg. 5, Suite 100
Austin, Texas 78752
Phone: (703) 556-1432
Email: kristen.walls@ngc.com

5. **Contract, Section 7. Sample Supplemental Agreement** is hereby renumbered and amended by adding **B. Conflicting or Additional Terms** as follows:

A) Services provided under this Contract shall be based upon the Sample Supplemental Agreement as set forth in Appendix D of this Contract. Customers may negotiate the terms and conditions of a Supplemental Agreement to suit their business needs so long as the Supplemental Agreement terms and conditions do not conflict with this Contract.

B) Conflicting or Additional Terms

In the event that conflicting or additional terms in Vendor Software License Agreements, Shrink/Click Wrap License Agreements, Service Agreements or linked or supplemental documents amend or diminish the rights of DIR Customers or the State, such conflicting or additional terms shall not take precedence over the terms of this Contract.

6. **Contract, Section 8. Intellectual Property Matters, A - L** is deleted and is hereby restated in its entirety in **Appendix A, Standard Terms and Conditions For Services Contracts, Section 4. Intellectual Property Matters A – L dated 02/04/15** as attached hereto.
7. **Appendix A, Standard Terms and Conditions for Services Contracts dated 12/17/12**, is hereby replaced in its entirety with **Appendix A, Standard Terms and Conditions for Services Contracts dated 02/04/15**, as attached.
8. **Authorized Exceptions to Appendix A, Standard Terms and Conditions for Services Contracts, as listed below** are hereby added as follows:

A. Section 6. Contract Fulfillment and Promotion, A. Service, Sales and Support of the Contract, is hereby replaced in its entirety:

Vendor shall provide service, sales and support resources to serve all Customers throughout the State. It is the responsibility of the Vendor to sell, market, and promote services available under the Contract. Vendor shall use its commercially reasonable efforts to ensure that potential Customers are made aware of the existence of the Contract. All sales to Customers for services available under the Contract shall be processed through the Contract.

B. Section 6. Contract Fulfillment and Promotion, H. DIR Cost Avoidance, is hereby replaced in its entirety:

As part of the performance measures reported to state leadership, DIR must provide the cost avoidance the State has achieved through the Contract. Upon request by DIR, Vendor shall provide DIR with a detailed report of a representative sample of service sold under the Contract. The report shall contain: service description, list price, price to Customer under the Contract, and pricing from three (3) alternative sources under which DIR customers can procure the services, if applicable.

C. Section 8. Contract Administration, B. Reporting and Administrative Fees, 5) Accurate and Timely Submission of Reports, is hereby replaced in its entirety:

a) The reports and administrative fees shall be accurate and timely and submitted in accordance with the due dates specified in this section. Vendor shall correct any inaccurate reports or administrative fee payments within a maximum of five business days upon written notification by DIR. Vendor shall deliver any late reports or late administrative fee payments within a maximum of five business days upon written notification by DIR. If Vendor is unable to correct inaccurate reports or administrative fee payments or deliver late reports and fee payments within a maximum of five business days, Vendor must contact DIR and provide a corrective plan of action, including the timeline for completion of correction. The corrective plan of action shall be subject to DIR approval.

b) Should Vendor fail to correct inaccurate reports or cure the delay in timely delivery of reports and payments within the corrective plan of action timeline, DIR reserves the right to require an independent third party audit of the Vendor's records as specified in C.3 of this Section, at DIR's expense.

c) Failure to timely submit three (3) reports or administrative fee payments within any rolling twelve (12) month period may, at DIR's discretion, result in the addition of late fees of \$100/day for each day the report of payment is due (up to \$1000/month) or suspension or termination of Vendor's Contract.

D. Section 8. Contract Administration, C. Records and Audit, is hereby replaced in its entirety:

1) Acceptance of funds under the Contract by Vendor acts as acceptance of the

authority of the State Auditor's Office, or any successor agency, to conduct an audit or investigation in connection with those funds. Vendor further agrees to cooperate fully with the State Auditor's Office or its successor in the conduct of the audit or investigation, including providing all records requested. Vendor will ensure that this clause concerning the authority to audit funds received indirectly by subcontractors through Vendor and the requirement to cooperate is included in any subcontract it awards pertaining to the Contract. Under the direction of the Legislative Audit Committee, a Vendor that is the subject of an audit or investigation by the State Auditor's Office must provide the State Auditor's Office with access to any information the State Auditor's Office considers relevant to the investigation or audit.

- 2) Vendor shall maintain adequate records to establish compliance with the Contract until the later of a period of four (4) years after termination of the Contract or until full, final and unappealable resolution of all Compliance Check or litigation issues that arise under the Contract. Such records shall include per transaction: Customer name, invoice date, invoice number, description, quantity, unit price, extended price, Customer Purchase Order number, contact name, Customer's complete billing address, the calculations supporting each administrative fee owed DIR under the Contract, Historically Underutilized Businesses Subcontracting reports, and such other documentation as DIR may request.
- 3) Vendor and/or Order Fulfillers shall grant access to all paper and electronic records, books, documents, accounting procedures, practices and any other items relevant to the performance of the Contract to the DIR Internal Audit department or DIR Contract Management staff, including the compliance checks designated by the DIR Internal Audit department, DIR Contract Management staff, the State Auditor's Office, and of the United States, and such other persons or entities designated by DIR for the purposes of inspecting, Compliance Checking and/or copying such books and records. Vendor and/or Order Fulfillers shall provide copies and printouts requested by DIR without charge. DIR shall provide Vendor and/or Order Fulfillers ten (10) business days' notice prior to inspecting, Compliance Checking, and/or copying Vendor's and/or Order Fulfiller's records. Vendor's and/or Order Fulfillers records, whether paper or electronic, shall be made available during regular office hours. Vendor and/or Order Fulfiller personnel familiar with the Vendor's and/or Order Fulfiller's books and records shall be available to the DIR Internal Audit department, or DIR Contract Management staff and designees as needed. Vendor and/or Order Fulfiller shall provide adequate office space to DIR staff during the performance of Compliance Check. If DIR finds Vendor to be responsible for inaccurate reports that are material, DIR shall provide to Vendor documentation sufficient to determine the inaccuracies present. Vendor shall have not less than 20 business days to review the reports and provide a written response to DIR with respect to the findings. If after review of Vendor's response, DIR determines that original findings with respect to Vendor's reports remain valid and that the inaccuracies are material, DIR may invoice for the reasonable costs of the audit, which Vendor must pay within thirty (30) days of receipt.

- 4) For procuring State Agencies whose payments are processed by the Texas Comptroller of Public Accounts, the volume of payments made to Vendor through the Texas Comptroller of Public Accounts and the administrative fee based thereon shall be presumed correct unless Vendor can demonstrate to DIR's satisfaction that Vendor's calculation of DIR's administrative fee is correct.
- 5) Vendor asserts that any information concerning any of Vendor's other customers or anything not pertaining specifically to goods and services sold by Vendor to DIR under the corresponding Contract constitutes confidential information of Vendor. Subject to Texas State law, any information, books, records and supporting documents made available in the course of any audits are confidential information of Vendor and will be maintained in strict confidence by DIR.

E. Section 9. Vendor Responsibilities, A. Indemnification, 2) Acts and Omissions, is hereby replaced in its entirety:

Vendor shall indemnify and hold harmless the State of Texas and Customers, and/or their officers, agents, employees, representatives, contractors, assignees, and/or designees, from and against any and all liability, actions, claims, demands, or suits, and all related costs, attorney fees and expenses (the "Damages") arising out of, or resulting from any acts or omissions of the Vendor or its agents, employees, subcontractors, Order Fulfillers, or suppliers of subcontractors in the execution or performance of the Contract and any Purchase Orders issued under the Contract. Should the State of Texas or any other third party be wholly or partially at fault for any Damages, Vendor shall be obligated to indemnify only to the extent it is determined to be at fault. The foregoing will not limit or delay Vendor's obligations to defend the State of Texas and Customers, and to reimburse the State of Texas and Customers for Damages as they are incurred. To the extent that the State of Texas or Customers have actually incurred expenses, Vendor's obligations to indemnify and hold harmless the State of Texas and Customers will not be delayed by any allegation of contributory negligence, or by appeal. VENDOR'S OBLIGATIONS SET FORTH ABOVE WILL NOT BE PRECLUDED, AVOIDED, OR LIMITED BY ANY CLAIM OF CONTRIBUTORY NEGLIGENCE. Vendor shall pay all costs of defense including attorneys' fees or, in the case of proportionate responsibility, a pro-rata share of the costs consistent with its share of responsibility. The defense shall be coordinated by the Office of the Attorney General for Texas State Agency customers and by Customer's legal counsel for non-state agency customers. Vendor will not be required to indemnify or hold harmless for its non-wrongful, non-negligent performance of written directives of Customers under this Contract or any purchase order issued under it.

F. Section 9. Vendor Responsibilities, A. Indemnification, 3) Infringements, is hereby replaced in its entirety:

- a) Vendor shall indemnify and hold harmless the State of Texas and Customers, and/or their officers, agents, employees, representatives, contractors, assignees, and/or designees, from any and all third party claims involving infringement of

United States patents, copyrights, trade and service marks, and any other intellectual or intangible property rights in connection with the performances or actions of vendor pursuant to this Contract. Vendor and the Customer agree to furnish timely written notice to each other of any such claim. Vendor shall be liable to pay all costs of defense including attorneys' fees. The defense shall be coordinated by the Office of the Attorney General for the Texas State Agency customers and by Customer's legal counsel for non-state agency customers.

b) Vendor shall have no liability if the alleged infringement is caused solely by: (i) use of the service in combination with services not provided under the Contract, (ii) any intellectual property right owned by or licensed to Customer other than those conferred under this Agreement, and to which Customer has expressly agreed in writing, or (iii) any use of service by Customer that is not in conformity with the terms of any applicable license agreement to which Customer has expressly agreed in writing.

c) If Vendor becomes aware of an actual or potential claim, or Customer provides Vendor with notice of an actual or potential claim, Vendor may (or in the case of an injunction against Customer, shall), at Vendor's sole option and expense: (i) procure for the Customer the right to continue to use the affected portion of the product or service, or (ii) modify or replace the affected portion of the product or service with functionally equivalent or superior product or service so that Customer's use is non-infringing.

G. Section 9. Vendor Responsibilities, B. Taxes/Worker's Compensation/ UNEMPLOYMENT INSURANCE is hereby replaced in its entirety:

1) VENDOR AGREES AND ACKNOWLEDGES THAT DURING THE EXISTENCE OF THIS CONTRACT, VENDOR SHALL BE ENTIRELY RESPONSIBLE FOR THE LIABILITY AND PAYMENT OF VENDOR'S AND VENDOR'S EMPLOYEES' TAXES OF WHATEVER KIND, ARISING OUT OF THE PERFORMANCES IN THIS CONTRACT. VENDOR AGREES TO COMPLY WITH ALL STATE AND FEDERAL LAWS APPLICABLE TO ANY SUCH PERSONS, INCLUDING LAWS REGARDING WAGES, TAXES, INSURANCE, AND WORKERS' COMPENSATION. VENDOR AGREES AND ACKNOWLEDGES THAT VENDOR ITS EMPLOYEES, REPRESENTATIVES, AGENTS OR SUBCONTRACTORS SHALL NOT BE ENTITLED TO ANY STATE BENEFIT OR BENEFIT OF ANOTHER GOVERNMENTAL ENTITY CUSTOMER UNDER THIS CONTRACT. THE CUSTOMER AND/OR THE STATE SHALL NOT BE LIABLE TO THE VENDOR ITS EMPLOYEES, AGENTS, OR OTHERS FOR THE PAYMENT OF TAXES OR THE PROVISION OF UNEMPLOYMENT INSURANCE AND/OR WORKERS' COMPENSATION OR ANY BENEFIT AVAILABLE TO A STATE EMPLOYEE OR EMPLOYEE OF ANOTHER GOVERNMENTAL ENTITY CUSTOMER.

2) VENDOR AGREES TO INDEMNIFY AND HOLD HARMLESS CUSTOMERS, THE STATE OF TEXAS AND/OR THEIR EMPLOYEES, AGENTS, REPRESENTATIVES, CONTRACTORS, ASSIGNEES, AND/OR

DESIGNEES FROM ANY AND ALL LIABILITY, ACTIONS, CLAIMS, DEMANDS, OR SUITS, AND ALL RELATED COSTS, ATTORNEY FEES, AND EXPENSES, RELATING TO TAX LIABILITY, UNEMPLOYMENT INSURANCE AND/OR WORKERS' COMPENSATION OR EXPECTATIONS OF BENEFITS BY VENDOR, ITS EMPLOYEES, REPRESENTATIVES, AGENTS OR SUBCONTRACTORS IN ITS PERFORMANCE UNDER THIS CONTRACT. VENDOR SHALL BE LIABLE TO PAY ALL COSTS OF DEFENSE INCLUDING ATTORNEYS' FEES. THE DEFENSE SHALL BE COORDINATED BY THE OFFICE OF THE ATTORNEY GENERAL FOR TEXAS STATE AGENCY CUSTOMERS AND BY CUSTOMER'S LEGAL COUNSEL FOR NON-STATE AGENCY CUSTOMERS.

H. Section 9. Vendor Responsibilities, C. Vendor Certifications, last paragraph is hereby restated in its entirety:

In addition, Vendor understands and agrees that in order to conduct business with a specific customer, Vendor may be required to comply with additional terms and conditions or certifications that an individual customer may require due to state and federal law (e.g., privacy and security requirements).

I. Section 9. Vendor Responsibilities, G. Responsibility for Actions, is hereby replaced in entirety:

1) Vendor is solely responsible for its actions and those of its agents, employees, or subcontractors, and agrees that neither Vendor nor any of the foregoing has any authority to act or speak on behalf of DIR or the State.

2) Vendor, for itself and on behalf of its subcontractors, shall report to DIR promptly when the disclosures under the Certification Statement of Appendix A to the RFO and/or Section 9.C. (xi) and (xii), Vendor Certifications of this Appendix A to the Contract change. Vendor covenants to fully cooperate with DIR to update and amend the Contract to accurately disclose employment of current or former State employees and their relatives and/or the status of conflicts of interest.

J. Section 9. Vendor Responsibilities, K. Limitation of Liability, is hereby replaced in its entirety:

For any claim or cause of action arising under or related to the Contract: i) to the extent permitted by the Constitution and the laws of the State of Texas, none of the parties shall be liable to the other for punitive, special, or consequential damages, even if it is advised of the possibility of such damages; and ii) Vendor's liability for damages of any kind to the Customer shall be limited to the total amount paid to Vendor under the Supplemental Agreement during the twelve months immediately preceding the accrual of the claim or cause of action. However, this limitation of Vendor's liability shall not apply to claims of patent, trademark, or copyright infringement.

K. Section 10, Contract Enforcement, B. Termination, 1) Termination for Non-Appropriation, a) Termination for Non-Appropriation by Customer is hereby restated as follows:

a) Termination for Non-Appropriation by Customer

Customer may terminate Purchase Orders if funds sufficient to pay its obligations under the Contract are not appropriated: i) by the governing body on behalf of local governments; ii) by the Texas legislature on behalf of state agencies; or iii) by budget execution authority provisioned to the Governor or the Legislative Budget Board as provided in Chapter 317, Texas Government Code. In the event of non-appropriation, Vendor and/or Order Fulfiller will be provided ten (10) calendar days written notice of intent to terminate. Notwithstanding the foregoing, if a Customer issues a Purchase Order and has accepted delivery of the services, they are obligated to pay for the services or they may discontinue using services under any return provisions that Vendor offers. In the event of such termination, subject to the immediately foregoing sentence, the Customer will not be considered to be in default or breach under this Contract, nor shall it be liable for any further payments ordinarily due under this Contract, nor shall it be liable for any damages or any other amounts which are caused by or associated with such termination.

L. Section 10, Contract Enforcement, B. Termination, 3) Termination for Convenience is hereby restated as follows:

1) Termination for Convenience

DIR may terminate the Contract, in whole or in part, by giving the Vendor thirty (30) calendar days written notice. A Customer may terminate a Purchase Order by giving the Vendor thirty (30) calendar days written notice.

M. Section 13. Warranty is hereby added:

Inasmuch as acceptance language is unique to the circumstance, DIR and Vendor agree that warranty/acceptance language shall be developed by the Customer and Vendor specific to each contract or Statement of Work. Such language at a minimum must:

- 1) Be written for specific work performed with clear parameters.
- 2) Contain clear definition of what is included – transition versus steady-state work.
- 3) Contain specific due dates, acceptance criteria, timeline for Customer notification in writing of dissatisfaction;
- 4) Include time period for Vendor to gather information necessary from Customer to determine nature of complaint/dissatisfaction and then time to correct;
- 5) Provide that testing is to be in line with contract requirements;
- 6) Not include new specifications; and

7) Include expectation of payment/dispute mechanics outlined or referenced.

N. **Section 14. American Recovery and Reinvestment Act (ARRA)** is hereby added:

American Recovery and Reinvestment Act (ARRA): Inasmuch as (TX state agency) has not notified Vendor that ARRA funds will be used in this Contract for Services, Vendor has made the assumption that ARRA funds will not be utilized at this time to fund this effort. Should after execution of this Contract for Services utilize ARRA funds for this effort, Vendor requests that at least two (2) months notice, if possible, be given before ARRA funds are obligated under this Contract for Services. This advance notice is to allow Vendor enough time to comply with the reporting requirements stated under federal law in the ARRA.

O. **Section 15. Warranties** is hereby added:

Vendor warrants that all services it performs under this Contract (including all products it provides) will be performed and provided in a good and workman-like manner and consistent industry standards and practices. EXCEPT AS EXPRESSLY SET FORTH HERE OR ELSEWHERE IN THIS AGREEMENT, VENDOR, ITS PARENT, SUBSIDIARIES AND THEIR AFFILIATES, SUBCONTRACTORS AND SUPPLIERS MAKE NO FURTHER WARRANTIES, EXPRESSED OR IMPLIED, AND SPECIFICALLY DISCLAIM ANY WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR THE FITNESS OR SUITABILITY OF THE EQUIPMENT ON WHICH THE SERVICES ARE PERFORMED, OR ANY MODIFICATIONS THEREOF, FOR ANY SPECIFIC APPLICATION, PERFORMANCE, RESULT OR USE. NO WARRANTY OR REPRESENTATION SHALL BE BINDING ON SELLER UNLESS IN WRITING AND SIGNED BY SELLER'S AUTHORIZED REPRESENTATIVE.

All other terms and conditions of the Contract not specifically modified herein shall remain in full force and effect. In the event of a conflict among provisions, the order of precedence shall be this Amendment Number 3, then Amendment 2, then Amendment 1, and then the Contract.

(Remainder of page intentionally left blank)

IN WITNESS WHEREOF, the parties hereby execute this amendment to be effective as of the date of the last signature, but in all events, no later than March 15, 2015.

Northrop Grumman Systems Corporation

Authorized By: Signature on File

Name: Kristen A. Walls

Title: Contracts Administrator

Date: March 20, 2015

The State of Texas, acting by and through the Department of Information Resources

Authorized By: Signature on File

Name: Dale Richardson

Title: Chief Operations Officer

Date: 4/8/15

Office of General Counsel: DRBrown 4-7-15